

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

PHOTOCURE ASA,)
)
)
Plaintiff,)
)
)
v.) Civil Action No. 1:08cv718
)
)
JON W. DUDAS,)
Under Secretary of Commerce for)
Intellectual Property & Director of)
the United States Patent &)
Trademark Office, *et al.*,)
)
Defendants.)
)

DEFENDANTS' NOTICE OF APPEAL

Pursuant to Federal Rule of Appellate Procedure 3, the defendants hereby appeal to the United States Court of Appeals for the Federal Circuit from the Judgment Order entered in this action on March 31, 2009 (attached as Exhibit A).

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Respectfully submitted,

DANA BOENTE
ACTING UNITED STATES ATTORNEY

By: _____ /s/
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DATE: May 29, 2009

ATTORNEYS FOR DEFENDANTS

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following:

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Date: May 29, 2009

/s/

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JON W. DUDAS, et al.,)
Defendants.)

JUDGMENT ORDER

In accordance with the accompanying Memorandum Opinion, Plaintiff's Motion for Summary Judgment (Dkt. no. 12) is GRANTED, and Defendants' Motion for Summary Judgment (Dkt. no. 21) is DENIED.

The Court declares that Plaintiff's application for a patent term extension for Patent No. 6,034,267 satisfies each requirement of § 156(a). Specifically, the parties do not dispute that §§ 156(a)(1)-(4) are satisfied. Section 156(a)(5)(A) is satisfied for the reasons stated in the accompanying Memorandum Opinion.

Accordingly, this matter is remanded to the Director for a ruling on the '267 patent term extension application in a manner consistent with this opinion. The parties are to bear their own costs.

ENTERED this 31st day of March, 2009.

Alexandria, Virginia

Liam O'Grady
Liam O'Grady
United States District Judge

